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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,637	04/16/2004	Dale A. Grove	25319A	1433
22889	7590	02/01/2007		
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			EXAMINER RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	
			MAIL DATE	DELIVERY MODE
			02/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/826,637

Applicant(s)

GROVE ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Applicant argues that the combination of Smith 2005 in view of Smith 2002 fail to and Smith 2002 fail to teach or suggest a gypsum facing material that contains the combination of (1) a randomly oriented open mesh filament network substantially impregnated with a first binder resin and (2) an aqueous secondary binder resin applied to the open mesh filament network where the secondary binder resin has a viscosity sufficient to partially penetrate the open mesh filament network and where the secondary binder resin includes at least one filler in an amount not more than 65% byweight, at least one reinforcing agent, and a fairly low glass transition organic binder in an amount of at least 6% by weight (claim 1) or a gypsum facing material that contains (1) a randomly oriented open mesh filament network impregnated with a first binder resin and (2) an aqueous secondary binder resin that has a viscosity sufficient to partially penetrate the open mesh filament network, where the secondary binder resin includes at least one filler, at least one reinforcing agent that may be acicular man made fibers, fibrous reinforcement agents, plate-like reinforcement agents, or combinations thereof, and at least one filler in an amount not more than about 65% by weight (claim 60). These arguments are not persuasive because as set forth in the Final Action mailed October 6, 2006, the combination of Smith 2005 and Smith 2002, disclose glass mesh bound together with a resin binder (Applicant's 1st binder) and coated with 1-17% by weight of styrene-butadiene-rubber polymer latex binder (Applicant's secondary binder as set forth in paragraph [0010] of the present specification. Applicant also argues that there is no teaching of a filler in an amount of about 65% by weight or less and that the disclosure in paragraphs [0011-0012] of Smith 2005 is not sufficient disclosure. This argument is not persuasive because in looking at the Smith 2005 reference in its entirety, one having ordinary skill in the art would have known that adding filler in the amount of 20-65% was well known in the art. As a result, the rejections are maintained.

Ula Ruddock
Ula B. Ruddock
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